



GOVERNMENT OF PUERTO RICO
**Puerto Rico Fiscal Agency and Financial
Advisory Authority**

April 9, 2020

VIA EMAIL

Ms. Natalie A. Jaresko
Executive Director
The Financial Oversight and
Management Board for Puerto Rico
P.O. Box 192018
San Juan, PR 00919-2018

Re: Puerto Rico Department of Health - Purchase of Rapid Test kits

Dear Executive Director Jaresko:

I hereby make reference to your letters dated April 6, 2020 and the date hereof, wherein you request (i) confirmation that certain purchase order agreement entered by the Puerto Rico Department of Health ("PRDH") has been cancelled and the corresponding public funds have been reimbursed to the corresponding accounts; and (ii) copy of such purchase order agreement, respectively.

First and foremost, I would like to start by emphasizing that the Government of Puerto Rico completely agrees that accountability controls and good governance are paramount during any time; particularly, during times of emergency. As you know, and consistent with what has been done in the past during other emergencies, special procurement processes have been implemented to effectively respond to the COVID-19 emergency. Despite the fact that these procedures are more expeditious, they still include controls to prevent fraud. Moreover, such procedures have to strictly comply with federal mandated regulations including, without limitation, procurement and cost-reasonableness requirements in order to ensure eligibility for reimbursement under applicable programs.

Therefore, consistent with the emergency procurement procedures in effect, and according to the information provided to AAFAF by the appropriate government entities, on March 26, 2020, the Department of Public Safety (the "DPS") issued a purchase order for Promedical COVID-19 rapid test kits for the amount of \$38,000,000 (the "Purchase Order"). The Purchase Order was issued as the vehicle for the acquisition of goods and services during Emergencies or Disasters declared by the Governor, according to the rules established by the General Services Administration (the "GSA"). Purchase orders are commonly used as the legal mechanism to purchase goods and services during emergencies so agencies may act and address the emergency in a swiftly manner.¹ Furthermore, the Purchase Order was evaluated by the Puerto Rico Health Department, the DPS, the Puerto Rico Emergency Management Bureau (commonly known as, "PREMA"), the GSA and the

¹ See Act 79-2019 and Article 3(k) of Act 230 of July 23, 1974, as amended.

Office of Management and Budget; certainly, each one of them within their core competencies. *See Attachment A.*

As you mention in your correspondence, the Purchase Order was not submitted for review to the Oversight Board under its Contract Review Policy, because the agencies understood that as written, such policy only covered “contracts”, within the formal meaning of said term in the context of government contracting, without mentioning purchase orders therein.² Undoubtedly, the Contract Review Policy does not specifically mention purchase orders in any way whatsoever, which from a legal perspective could certainly produce different interpretations regardless of any provision of the Puerto Rico Civil Code quoted and interpreted out of context. Otherwise, if it had been clear, the agencies involved would have submitted the purchase order to the Oversight Board for review. Consequently, in the spirit of collaboration and compliance, I recommend you modify the Contract Review Policy to expressly include purchase orders, as well as any other mechanism to purchase goods or services, ensuring thereby that we avoid any future legal misunderstanding as well as any unintended noncompliance from governmental agencies.

Notwithstanding the foregoing, as to your requests, and as mentioned in our communication dated April 8, 2020, we hereby confirm that the purchase order was terminated by PREMA on April 2, 2020, four days prior to the receipt of your first letter (the “Termination”). *See Attachment B.* Additionally, and pursuant to the Termination, PREMA also requested the immediate reimbursement of the \$19,000,000 deposit (the “Deposit”). Consequently, on April 6, 2020, the Deposit was fully reimbursed to the Government of Puerto Rico, as confirmed by the wire transfer receipt issued by Banco Popular of Puerto Rico. *See Attachment C.*

Finally, as requested, we also include herein copy of the Purchase Order, among other documents, as delivered to us by the relevant agencies. *See Attachment A.* It should be noted that these documents are being submitted at your request, but the Government is not requesting the Oversight Board take any action, since the transaction described herein has been cancelled.

The contents of this letter concerning the transaction described herein is true to the best of my knowledge and as represented to me by the appropriate government officials and entities. Should you have any question regarding the foregoing or need any additional documentation, please feel free to contact me at your convenience. As always, I look forward to keep collaborating together during these unprecedented times as we continue battling the threat of the COVID-19 pandemic for the best interests of the People of Puerto Rico.

Respectfully,



Omar J. Marrero Díaz, Esq.

Executive Director

Governor’s Representative and Ex-Officio Member

² Please note that under Puerto Rico law, government “contracts” are subject special statutes, to multiple formalities, have to be registered in the Comptroller’s Registry, and must include certain mandatory clauses. Therefore, the Puerto Rico Civil Code is not the only source of law concerning government contracts.